

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

FIELDTURF USA, INC., ET AL.	)	
	)	
Plaintiffs,	)	CASE NO.: 1:06CV2624-PAG
	)	
v.	)	
	)	
SPORTS CONSTRUCTION GROUP,	)	
LLC, ET AL.	)	
	)	
Defendants.	)	

**PLAINTIFFS' MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION**

On April 18, 2007, Plaintiffs FieldTurf USA, Inc. and FieldTurf Tarkett Inc. (collectively “FieldTurf”) voluntarily dismissed Count I of the Complaint, i.e., Infringement of the ‘689 patent. (ECF No. 48). By this Motion, FieldTurf confirms that it gives up its right to sue defendant Sports Construction Group (“SCG”) for infringement of the ‘689 patent as it relates to any current or past products that SCG used in the Concord University project -- the only location where “any” accusation has “ever” been made. Based upon the preceding, Federal Circuit case law holds that there is no further case or controversy over the validity, enforceability, or infringement of the ‘689 patent. Therefore, pursuant to Fed. R. Civ. P. 12(b)(1) and 28 U.S.C. §2201(a), the following counterclaims should be dismissed on the basis that this Court no longer has subject matter jurisdiction over them with respect to the ‘689 patent:

- Declaration that SCG does not infringe the ‘689 patent (Counterclaim I); and
- Declaration that the ‘689 patent is invalid (Counterclaim VII).

Dismissal of the counterclaims will streamline the parties' preparation for the upcoming Markman hearing, will conserve judicial resources, and will save cost and time for the parties.

A memorandum in support has been filed contemporaneously herewith.

Respectfully submitted,

Date: May 7, 2007

/s/ H. Alan Rothenbuecher

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*FieldTurf USA, Inc. and FieldTurf Tarkett Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 7, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ H. Alan Rothenbuecher

H. Alan Rothenbuecher

*Attorney for Plaintiffs*